(Testimony of Henry Lester Pineda.)

Q. Do you remember a particular incident in November, 1941?

A. About what? Cutting butter?

Q. In the plant of Nye & Nissen.

A. Working overtime?

Q. Do you remember on your direct examination being asked to describe an incident that occurred in November, 1941, by Mr. Hippeli?

A. I don't know. He asked me questions and I answered them.

Q. All right, I will ask you a question: Do you remember any incident of any kind that occurred in November, 1941, at the plant of Nye & Nissen?

A. I know in 1941 I believe I told Mr. Hippeli that I worked overtime one night.

Q. Do you remember working overtime in November, 1941? A. Yes.

Q. Do you remember what you did?

A. Yes.

Q. Do you remember who was present?

A. Yes.

Q. Who was present?

A. Mr. Menges, Mr. Goddard and myself and Mr. Nix.

Q. Anyone else?

A. Mr. Moncharsh and Mr. Berman.

Q. All of the defendants were there. Do you remember an incident where all the defendants who sit here in court were there in November, 1941, when you were working overtime after dinner?

A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Is that right? A. Yes.

Q. What happened on that evening, in the presence of Mr. Moncharsh? [1081]

A. In the presence of Mr. Moncharsh we were transferring eggs.

Q. You were transferring eggs? A. Yes.

Q. What do you mean by that?

A. Taking the cases—taking the eggs out of one case and placing them in another.

Q. Were there any girls there? A. Yes.

Q. Pardon me? A. Yes.

Q. There was a crew of girls? A. Yes.

Q. The matter of transferring eggs from case to case was a common occurrence in that plant, was it not?

A. Not necessarily, no.

Q. Was it not done weekly?

A. No, I wouldn't say that. We transferred cases of eggs into what we call half cases. That was done quite often, yes.

Q. Weren't eggs transferred from wooden case to wooden case constantly in the plant of Nye & Nissen during the period of 1941 and up to 1942, when you left?

A. What do you mean by constantly?

Q. With regular frequency, maybe two or three times a week? A. No.

Q. Two or three times a month?

A. Oh, yes, about two or three times a month.

Q. And in large quantities, isn't that correct?

A. Well, sometimes we did a little, but some-

(Testimony of Henry Lester Pineda.)

times they were large, but not too big, because they couldn't handle that many. The girls transferred them too fast. [1082]

Q. On a night, Mr. Pineda, with Mr. Moncharsh present, Mr. Berman, Mr. Nix and Mr. Goddard, and Mr. Menges, and yourself,—— A. Yes.

Q. That would be six or seven men and a lot of girls, you could transfer hundreds and hundreds of cases, the eggs from box to box, couldn't you?

A. That is right.

Q. So on an occasion like that it would be a simple matter to transfer 500 cases of eggs, wouldn't it, for seven men?

A. Not five hundred, no. The girls did the transferring. We just did the taking the tops off and putting the tops on again.

Q. That is a very fast-moving operation, isn't it?

A. Yes, very fast.

Q. You all had experience in handling the eggs and handling the cartons, is that correct?

A. Yes.

Q. And the girls would do the work of lifting the fillers out and putting them in another case?

A. Yes, three dozen eggs at a time.

Q. You did the work of nailing the boxes and opening the boxes? A. That is right.

Q. Do you know where else eggs came from that you were transferring on the particular occasion in November?

A. They came from the plant.

Q. What plant? A. 324 Townsend.

(Testimony of Henry Lester Pineda.)

Q. Where did they come from originally, do you know?

A. I don't know, no. [1083].

Q. Were they ever candled in the plant?

A. I don't recall.

The Court: It is time for adjournment. The jurors may be excused until ten o'clock tomorrow morning.

(Thereupon an adjournment was taken until tomorrow, Thursday, January 31, 1946, at ten o'clock a. m.) [1083-a]

Tuesday, February 5, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

The Court: Call the roll of the jurors.

(The roll was called by the clerk, all jurors being present.)

HENRY LESTER PINEDA,

recalled;

Cross-Examination (resumed)

The Court: If my memory serves me, you wanted ten minutes.

Mr. Faulkner: I have had a couple of extra days, your Honor, and I have read this transcript carefully, and I find there are about three items that have not been touched on, at all.

The Court: Proceed.

Mr. Faulkner: Q. Mr. Pineda, you testified concerning an incident when a sergeant had come into the plant of Nye & Nissen and Mr. Goddard

(Testimony of Henry Lester Pineda.)

had talked to him about going out and seeing about moving an automobile. A. Yes.

Q. Do you remember the incident?

A. Yes.

Q. When did it occur?

A. I believe it was about 1939, I believe.

Q. Who was the soldier?

A. You mean the sergeant?

Q. Yes. A. I don't know his name.

Q. Who was the inspector in the premises of Nye & Nissen at the [1084] time?

A. I think it was Colonel Foster; I am not sure.

Q. At all events, on that occasion Colonel Foster was there and he also came in with a soldier?

A. Yes.

Q. That soldier was detailed by him in your presence to remain out on the main floor of the plant of Nye & Nissen?

A. That's right.

Mr. Pratt: The witness did not say that. He did not say in the first place it was Colonel Foster. He said he thought. Perhaps it was Colonel Foster. Then Mr. Faulkner puts the definite words in his mouth, which is contrary to the witness' statement.

Mr. Faulkner: Mr. Pratt evidently does not pay any attention to the testimony he brings out on direct examination. The record is quite clear, the incident relates to Colonel Foster. He says again he thinks it is Colonel Foster. Any answer he gives me he qualifies, but when they ask him a question

(Testimony of Henry Lester Pineda.)

it is always positive and it was positively Colonel Foster, and that is not a legal objection, your Honor. I don't want to be interrupted by these gratuitous speeches by Mr. Pratt. I think counsel for the Government, with their experience, should confine themselves to making a legal objection during the course of my cross-examination, and not make these speeches.

Mr. Pratt: That is not a fair statement by counsel. I have certainly tried to be courteous and I have tried to confine [1085] myself to the rules of procedure. The reason I got up as I did was because I thought Mr. Faulkner had misquoted the witness. The witness said, "I think it was Colonel Foster," and then Mr. Faulkner puts the question with the inference that the witness had made a very positive statement that it was Colonel Foster.

Mr. Faulkner: All right, Mr. Pratt, maybe we can stipulate. Do you want the record to show that he merely thinks it is Colonel Foster, or do you want the record to show that it was Colonel Foster, the way he testified on direct examination, whichever you wish let the record show it.

Mr. Pratt: Whichever way the record stands. I don't want to change the record in any way.

Mr. Faulkner: Q. You have testified further, Mr. Pineda, of an incident when Mr. Goddard received an Army inspector's stamp and stamped some cases; do you remember that incident?

A. Yes. We received the Army inspector's stamp quite a few times.

(Testimony of Henry Lester Pineda.)

Q. Give me the name of one Army inspector who turned over his stamp to you to stamp cases?

A. None ever turned it over to me.

Q. Pardon me?

The Court: "None ever turned it over to me."

Mr. Faulkner: Q. Give me the names of every Army inspector who turned over his stamp in your presence to anyone in [1086] the plant of Nye & Nissen?

A. When Mr. Goddard brought the stamp over to where I was working I wouldn't know who handed the thing to him.

Q. Give me the name of some inspector who was in the premises at a time when you saw Mr. Goddard ever handle an Army inspector's stamp.

A. Colonel Foster.

Q. Anyone else?

A. Might have been, but I don't remember.

Q. Then you do remember some occasion when Colonel Foster turned over a stamp to Mr. Goddard?

A. Well, I am not saying I saw him hand it to him, but he was in the premises.

Q. When he was in the premises was there any other soldier with him in the premises?

A. Yes, there usually was one or two.

Q. On the occasion that you saw Mr. Goddard with the Army inspector stamp and when Colonel Foster and these other soldiers were in the premises, tell me what you personally saw Mr. Goddard do with the stamp.

(Testimony of Henry Lester Pineda.)

A. I saw him stamp labels and I saw him stamping cases.

Q. What cases did you see him stamp?

A. The cases we had there for the inspectors who was supposed to pick out his own lot there.

Q. How do you know that, Mr. Pineda?

A. How do I know what?

Q. How do you know the particular cases that Mr. Goddard stamped were eggs that Colonel Foster had selected for an inspection?

A. That is the cases we put in front of him, that is the cases he took out from the samples. [1087]

Q. The occasion when Mr. Goddard used the stamp may have been in the presence of the inspector? A. Yes.

Q. When was it?

A. That was 1938 or '9.

Q. What kind of eggs were involved?

A. I don't recall what kind of eggs.

Q. Did you ever seen the purchase order?

A. No.

Q. Did you ever see the invoice?

A. No.

Q. You were present, however, when a quantity of eggs was tendered to Colonel Foster?

A. Yes.

Q. Who had given you any direction to be present?

A. Who would give me——

Q. Yes; why were you there?

(Testimony of Henry Lester Pineda.)

A. Mr. Goddard.

Q. What? A. Mr. Goddard.

Q. Mr. Goddard told you to assist?

A. Yes.

Q. How many cases of eggs were involved?

A. I don't know the quantity, that is not my business.

Q. Your business was breaking eggs?

A. And helping on the bench.

Q. Where there ten cases involved?

A. No. There probably were a couple of hundred.

Q. There probably were a couple of hundred. Were they stacked altogether? A. Yes.

Q. And you said you saw Mr. Goddard using a Veterinary Corps stamp on those cases?

A. That's right.

Q. Did he stamp them all?

A. Well, to my knowledge, yes.

Q. All of them? A. Yes. [1088]

Q. You testified to a transaction, Mr. Pineda, relating to Pier 30. Do you remember that transaction?

The Court: Identify the transaction.

Mr. Faulkner: That is the only transaction you referred to in your direct examination relating to Pier 30. Do you remember that transaction?

A. No. We did a lot of transactions at Pier 30. If you ask me the questions I will answer them.

Q. You don't remember the transaction relating

(Testimony of Henry Lester Pineda.)

to Pier 30, is that right, because you had a lot of business.

A. We went there a lot of times.

Q. Who conducted Pier 30? A. Matson.

Q. Do you remember a specific transaction down there relating to the late spring of 1942, in which Mr. Nix, Mr. Menges, and you and Mr. Goddard were working on some cases that Mr. Moosman was going to inspect there? A. Yes.

Q. Were the eggs that were involved in that transaction inspected? A. Yes.

Q. Where were they inspected?

A. At the Nye & Nissen plant.

Q. By whom?

A. I believe it was Mr. Moosman.

Q. When was that occasion?

A. Sometime in 1942, I think.

Q. Is that the occasion when you went down to the pier about the time of that inspection?

A. Yes. I used to go down to the pier quite often.

Q. Did you go in connection with an inspection down to the pier? [1089]

A. I believe I did.

Q. You believe you did?

A. Yes. I went down there quite a few times.

Q. Do you remember going down to the pier in respect to this particular shipment in which Mr. Moosman inspected some eggs on the plant floor of Nye & Nissen?

(Testimony of Henry Lester Pineda.)

A. Yes; in 1942 I was going quite a lot down there, because Mr. Nix was no longer with us. I used to go down there in his place.

Q. The occasion I am referring to is the late spring of 1942, in which you said that Mr. Nix was present.

A. I probably made a mistake then.

Q. Do you remember an occasion that you testified to in great detail here on your direct examination concerning an inspection of eggs by Mr. Moosman, that was delivered to Pier 30?

A. Yes. Is that that order that was candled at Nye & Nissen's?

Q. Did you see the eggs inspected by Mr. Moosman? A. Yes.

Q. When were they inspected with reference to the time you went to the pier?

A. Inspected the day before; sometimes that same day.

Q. What? A. The day before.

Q. You remember that distinctly?

A. Yes.

Q. Did you ever seen the purchase order for those eggs?

A. No, I never do see them.

Q. Did you ever seen the invoice covering the eggs? A. No.

Q. Did you candle the eggs, yourself?

A. No. [1090]

Q. Did you observe them being candled?

(Testimony of Henry Lester Pineda.)

A. I don't remember, but I probably did if they candled them at Nye & Nissen's.

Q. Do you know whether the particular eggs that Moosman inspected were candled?

A. In the Nye & Nissen plant on Townsend street.

Q. Why do you say that?

A. Because I brought them up there for inspection, they used to candle out in front——

Q. I am not talking about Mr. Moosman. I am talking about the candling of the eggs of Nye & Nissen, whether Nye & Nissen candled the eggs, or whether——

A. I believe it was at the plant there.

Q. Do you remember another occasion candling the eggs that were inspected by Mr. Moosman?

A. I can't say that particular order, because we did that every day.

Q. You know, do you not, Mr. Pineda, that most of the eggs that came into the plant of Nye & Nissen were candled elsewhere by the Nye & Nissen plants?

A. They were always re-candled, not all of them, they were all re-candled at Nye & Nissen's at 324 Townsend Street. That's why the girls were there.

Q. From your knowledge of the Nye & Nissen eggs, were all eggs that came in there re-candled in that plant?

A. No, not all of them, most of them.

Q. You say most of them were?

A. Yes.

Q. Don't you know, Mr. Pineda, as a matter of

(Testimony of Henry Lester Pineda.)

fact that all eggs that came from dealers in the Petaluma area and from [1091] the Petaluma plants, and from the Santa Cruz plant, and from the various Nye & Nissen plants, were scarcely if ever candled on Townsend Street?

A. I worked there long enough to know they were candled there, even the ones that came from Petaluma still we candled them at the Nye & Nissen plant.

Q. What proportion of the eggs that came into the plant on Townsend Street were re-candled or candled in the plant at Townsend Street?

A. I don't know.

Q. You say most of them? A. Yes.

Q. Would you say 90 per cent?

A. I couldn't tell you. A very few times they came from Petaluma and we just put them through for the inspector to inspect, but most of them would go into the candling room.

Q. Would you say 60 per cent?

A. I really couldn't tell you.

Q. You say most. What do you mean by most?

A. Most.

Q. Most of the eggs that passed before your eyes were re-candled or candled in the plant of Nye & Nissen on Townsend Street?

A. Yes.

Q. On this occasion that you refer to, where Mr. Moosman came in, you observed him candling certain eggs? A. That's right.

Q. Do you know how many cases?

(Testimony of Henry Lester Pineda.)

A. There were not very many. Let's see, now. I don't quite remember now.

Q. With respect to the occasion—I will withdraw that. Did you see any particular cases of eggs that Mr. Moosman inspected actually candled in the plant of Nye & Nissen on Townsend Street?

A. I believe I brought them away from the candling room and placed them outside. Like I say, Mr. Nix was not there any more. I had to do a little more of that work.

Q. Have you a definite recollection that that is what you did on that day?

A. I believe that is what it was.

Q. You say you believe. A. Yes.

Q. Is that a recollection—— A. Yes.

Q. You are not positive?

A. No. That is quite a long time ago.

Q. That's right. After Mr. Moosman finished his inspection of the eggs, what then happened to the eggs?

A. After he left we—on this occasion, I believe the one you are talking about is when we transferred some cases of eggs.

Q. You saw Mr. Moosman inspect the eggs?

A. Yes.

Q. Then what happened to the cases when he was through his inspection?

A. When he was through we nailed them up.

Q. Then what happened to them?

A. Then we brought them back there—I used to work late at night, and I used to buff them.

(Testimony of Henry Lester Pineda.)

Q. Who is "we"?

A. Well, Mr. Menges, Mr. Goddard, and myself.

Q. You brought them back where?

A. Back to the candling room.

Q. Then what did you do with them?

A. I buffe them.

Q. You buffed them? A. Yes.

Q. You mean you buffed the marks off?

A. Buffed the marks off, yes. [1093]

Q. Then what did you do with those cases?

A. I brought them up to one part of the plant, there; after I buffed them I ran them up and Mr. Goddard took them.

Q. Then what?

A. Mr. Goddard takes them.

Q. Takes them? A. Yes.

Q. What then——

A. There were about fifteen on the flat, the way we laid those cases of eggs on a flat so we can get to both sides when I buffed them. Then I moved them out and brought another tray in. Then Mr. Goddard takes them from there.

Q. You say he takes them. What did he do?

A. I don't know. I put another label on to make them look like new, and he takes them then.

Q. He would take over? A. Yes.

Q. He is a single man on the floor, there. What would he do?

A. If he wants to run them all the way up in front he would do it.

Q. What did he do with these cases?

(Testimony of Henry Lester Pineda.)

A. I couldn't tell you.

Q. Then you didn't see what he did?

A. No.

Q. Did the eggs you say you saw Mr. Moosman inspect on that occasion in 1942—after he inspected them they were nailed up and you buffed the stamp off? A. Yes. Later, I——

Q. That is the last you know definitely of what happened to those eggs?

A. After Mr. Moosman inspected the eggs I couldn't tell you if it was the exact eggs, that's the reason [1094] I used to buff them.

Q. I am not asking for your reason. I am trying to follow these eggs, Mr. Pineda. You would buff the mark on the cases of eggs at night?

A. Yes.

Q. After Mr. Moosman in 1942 had inspected them? A. Yes.

Q. After you buffed them I understood you to say you turned them over to Mr. Goddard?

A. Yes.

Q. And you then lost track of the eggs?

A. Yes.

Q. Is that right? A. Yes.

Q. Sometime after that, or in that proximity, you went down to pier 30? A. That's right.

Q. Did you go down with a truckload of eggs?

A. Yes.

Q. Whom did you ride with?

A. I don't recall who. I believe it was Mr. Eby.

(Testimony of Henry Lester Pineda.)

Q. When you got to the pier who was there?

A. The workers there, the checkers, the workers.

Q. Anyone from Nye & Nissen other than yourself and Mr. Eby? A. I don't remember.

Q. Was Mr. Moosman there? A. No.

Q. On that occasion you took some eggs down to that pier? A. That's right.

Q. Isn't that correct? A. Yes.

Q. Now, then, did you help unload the eggs?

A. Yes.

Q. Did you ever open the eggs? A. No.

Q. Were they opened in your presence?

A. No. [1095]

Q. After you unloaded the cases of eggs what did you then do? A. Came back to the plant.

Q. From that experience down there on pier 30, you know Mr. Eby unloaded a truckload of eggs, is that right?

A. If it was Eby. I think it was, and myself.

Q. That is the driver, anyway? A. Yes.

Q. Was Mr. Goddard there? A. No.

Q. Was Mr. Menges? A. No.

Q. Mr. Berman? A. No.

Q. Mr. Moncharsh? A. No.

Q. So, taking these transactions in sequence, you observed Mr. Moosman inspect some eggs one day, then the next day you got on a truck and helped unload some eggs down on pier 30?

A. That's right.

Q. Now, you testified, Mr. Pineda, to a transaction on Fisherman's Wharf, where a delivery was

(Testimony of Henry Lester Pineda.)

made on a pier where there were a lot of Army men around? A. That's right.

Q. Did you ever see the purchase order for that shipment of eggs? A. No.

Q. Did you ever see the invoice on that shipment of eggs?

A. No, I never saw any of those.

Q. Did you ever examine the eggs that were contained in the cases of that shipment of eggs?

A. No.

Q. You testified to a transaction on pier 16. Did you ever see the purchase order for the eggs involved in that transaction? [1096] A. No.

Q. Did you ever see the invoice covering the delivery of those eggs? A. No.

Q. Did you ever inspect the eggs contained in the cases in that transaction? A. No.

Q. You testified to a transaction, two transactions on pier 48, a Navy pier. Did you ever see the invoice involved in either of those shipments of eggs? A. No.

Q. Did you ever see the purchase order involved in either of those shipments of eggs? A. No.

Q. Did you ever inspect any of the eggs contained in any of the cases that you delivered on either of those piers? A. No. [1097]

Q. In any of the eggs involved in any of the transactions you just referred to—Fisherman's Wharf, pier 16, pier 30-32, or pier 48 or 50—did you ever personally candle any egg that was con-

(Testimony of Henry Lester Pineda.)

tained of your own knowledge in any of those cases? A. No, I never did candle.

Q. Did you ever see any egg to your own knowledge candled that went into any of those cases delivered on any of those piers? A. No.

Mr. Faulkner: That is all.

Redirect Examination.

Mr. Hippeli: Q. Mr. Pineda, I direct your attention to the episode which occurred in February, 1941, at which time Colonel Hand was inspecting certain eggs at Nye & Nissen. Do you recall that incident? A. Yes.

Q. Do you recall the time at which Colonel Hand was in the candling room? Do you recall that time? A. Yes.

Q. And at that time there were certain cases of fresh eggs on the main floor of the warehouse, were there not? A. Yes.

Q. And there were certain cases of eggs——

Mr. Faulkner: We object to that as leading and suggestive, your Honor.

Mr. Hippeli: These questions are preliminary, your Honor.

Mr. Faulkner: It doesn't make any difference. You asked the witness if there were certain cases of fresh eggs on the floor. The witness is not qualified to say whether he knows the eggs [1098] are fresh, processed, cold storage, or anything else.

Mr. Hippeli: I think throughout the witness' testimony on this particular transaction the eggs on

(Testimony of Henry Lester Pinida.)

the floor were characterized as fresh and those in the cooler on one occasion at one time during the transaction were characterized as having been from cold storage. I am identifying two separate lots of eggs at this time, the same language in which they have been identified throughout the trial.

The Court: Read the question, Mr. Reporter.

(The last question and answer were read.)

Mr. Faulkner: I ask the answer go out and I object to that type of examination and that particular question as leading and suggestive.

The Court: Fresh eggs?

Q. How do you know they were fresh?

A. According to the transaction he talking about, 1941——

Q. Speak up so the jurors can hear you?

A. ——1941, we were supposed to be giving Colonel Hand some fresh eggs to examine, and we had some cold storage eggs in the cooler.

The Court: Proceed. Let the question and answer stand.

Mr. Hippeli: Q. While Colonel Hand was in the candling room will you explain how the eggs which were on the floor of the warehouse were stacked?

Mr. Faulkner: We object to that as not proper redirect examination, your Honor. In other words, they examined him on [1099] this transaction fully.

The Court: Didn't we go into that on direct examination?

Mr. Hippeli: Not the manner in which they were

(Testimony of Henry Lester Pineda.)

stacked. The purpose of this question, your Honor, is this: Mr. Faulkner asked the witness many questions on cross-examination on this particular transaction. One of the answers which he brought out was that during a certain period of time during which the eggs were transferred from the floor to the cooler and from the cooler to the floor there was a time when, if Colonel Hand came out of the candling room there would be no cases of eggs on the floor. He would also have the witness testify in such a fashion as to indicate that the floor was covered with one layer of eggs, out on the main floor of the warehouse, that there was only one dolly around; he has not brought out how the cases were stacked in the cooler. But the inference that may be drawn and the argument that may be made from the manner in which Mr. Faulkner had the witness place the two lots of eggs in the two places would make it almost impossible to make the switch to which he has testified. I want to clarify the record to show the manner in which the eggs were placed on this floor of the warehouse, the manner in which the eggs were stacked in the cooler, and the manner in which the cases were taken from the floor to the cooler and from the cooler to the floor. I want to show it was done very easily while Colonel Hand was in the candling room. [1100]

Mr. Faulkner: That is the point of my objection. On the direct examination of this witness these men do not remember what they brought out themselves. The man testified clearly and posi-

(Testimony of Henry Lester Pineda.)

tively how those eggs were opened up at the direction of somebody. He testified how the eggs were sorted on the floor long before I ever asked him a question.

The Court: So there is no question about it, so that it may be cleared up, I will allow it.

Mr. Faulkner: If your Honor please, if a witness has testified on direct examination in a certain manner, and if, as Mr. Hippeli says, that I demonstrated on cross-examination that it would be physically impossible for it to have happened that way, I think I am entitled to have the record remain that way to the jury, and that they should not be permitted under the guise of redirect examination to have him change all of this testimony.

The Court: As long as there is any question about it, the Court is determined to clear the matter up. I will allow it.

Mr. Faulkner: Exception.

The Court: Proceed.

Mr. Hippeli: Q. Will you explain how the lot of eggs in the period time that Colonel Hand was in the candling room were stacked on the floor?

A. Yes.

Mr. Faulkner: That is objected to on the ground it has been asked and answered on direct examination and cross examination. [1101]

The Court: He may answer.

Mr. Faulkner: Exception.

The Court: I will indicate to Counsel I am

(Testimony of Henry Lester Pineda.)

limiting this testimony; so clear it up in the briefest time possible.

The Witness: They have trays and they place one high on the tray, and then about—there are around four or five cases in front of this tray and four or five in back one high, and the same thing goes on until we have all these trays—they are not all on the floor one high, but some on the floor one high, and on the tray one high.

Mr. Hippeli: Q. How are the cases of eggs stacked in the cooler? A. In the cooler——

Mr. Faulkner: Your Honor, that is not in response to the question. He says what we do, not what he did on a particular occasion.

The Court: With the hope that we may get through with this witness, I will allow it. Proceed.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. How were the cases of eggs stacked in the cooler?

Mr. Faulkner: Same objection, your Honor, asked and answered.

The Court: The objection will be overruled.

Mr. Falkner: Exception.

A. In the cooler one high—instead of putting it in like we [1102] do cases of eggs, where we cross them, they are straight, so they are just—well, about three high straight up, and there is one on top to tie them. We call it a tie, because one on top of two cases of eggs will keep them from falling usually.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Q. Were the cases in the cooler on the tray or on the floor? A. On the tray.

Q. Will you explain how the cases of eggs were brought from the floor to the cooler?

Mr. Falkner: Same objection, asked and re-asked on direct examination and on cross examination.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

A. There is a tray with about four cases of eggs, one high, and then there is three or four—four or five in front of it. There is one of us gets on each side of the case and just lifts it right up and put it on top of these other cases of eggs, and you can do that very fast, just one hand on each side of the case, and you put four or five in front of them, on top, on top of this tray, and do the same in back. That leaves just one tray in each aisle to take. When your take this front and back of the tray, on this tray, you pulled out and substituted another tray in the same way—took the top ones off and leave four on the tray, four or five in front and four or five in the back. You see, they aren't crossed like we usually do on thirty cases of eggs where they are crossed and you can't take them off. [1103] These are placed straight. We usually call that to label, so a man can get at both sides of the case. Call it labeling.

Mr. Hippeli: Q. After Colonel Hand had candled the eggs did you observe him stamping the eggs?

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: We object to this as leading and suggestive, your Honor.

The Court: The objection will be sustained.

Mr. Hippeli: Q. Did you observe Colonel Hand come from the candling room on this occasion?

A. Yes, he came—after he was through with his inspection he came out from the candling room.

Q. What did he do?

A. He started stamping the cases of eggs.

Q. Did you observe anything in his hand?

A. He had his pad in his hand, his stamp in the other hand, and then he goes around and stamps each case three times where these papers cross, one on each side—like a case is divided into two sections—one on each section and one on the side.

Mr. Faulkner asked you if you used a stencil brush to mark cases of eggs. Did you use such brush? A. Yes.

Q. What type of ink did you use on that brush?

A. Black.

Mr. Falkner: I object to all of that as not proper redirect examination, your Honor.

The Court: I will allow it to stand. Proceed. The objection is overruled.

Mr. Faulkner: Exception. [1104]

Mr. Hippeli: Q. Was that the same brush which Mr. Goddard and Mr. Menges gave you to simulate the mark of Colonel Foster?

A. Not the same brush, the same type of brush.

Mr. Faulkner: Same objection.

The Court: Let the question and answer stand.

Mr. Faulkner: Exception.

(Testimony of Henry Lester Fineda.)

Mr. Hippeli: Q. What ink was used with this latter brush? A. The latter brush——

Mr. Faulkner: I object again. It is not redirect examination. A man testifies what he did, and on cross examination we show that he used black ink and a black brush to mark a case.

The Witness: A case?

Mr. Faulkner: The Government wants the last word of the witness. I do not think they are permitted under the rules of law.

Mr. Pratt: That is a very unfair statement on Counsel's part. The purpose of this redirect examination is to clarify the evidence, and it relates entirely to the questions asked by Mr. Falkner on cross examination, and certainly the Government has a right to clarify a situation which was brought up in connection with the cross examination. We do not want to prolong this examination.

The Court: Let us get through with this witness. The objection will be overruled. Proceed.

Mr. Faulkner: Exception. [1105]

Mr. Hippeli: Q. What color of ink was used in this latter brush?

A. The latter brush—was that the brush we used for the cans of eggs?

Q. Yes.

A. Black ink that Nye & Nissen always used on their cases.

Q. What color ink was used in the brush that Menges and Goddard gave you to use on the cases of eggs? A. Bright purple.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: Leading and suggestive. Now he puts in the witness' mouth that Goddard and Menges gave him the brush.

The Court: That question is not leading and suggestive. Let us have it read.

(The last question was read by the reporter.)

The Court: The objection may be overruled. He may answer.

Mr. Faulkner: Exception.

A. Bright purple ink.

Mr. Hippeli: Q. Directing your attention to January of 1941, do you recall an incident in which you were in the cooler at Merchants Ice and Cold Storage Company?

A. Yes. That is the transaction that we were down there to have the inspector——

Mr. Faulkner: We ask that that all go out as volunteered.

The Court: Q. Do you remember? Answer yes or no.

A. Yes.

Mr. Hippeli: Q. Do you remember that?

A. Yes.

Q. That was a freezing room, was it not? Was it a freezing room or a cooling room?

A. It was a cooler. [1106]

Q. Who was present with you in the cooler?

A. An Army man, Mr. Goddard, myself, Mr. Nix, and I forgot who else.

Q. Did you and Mr. Goddard hand cases of eggs to the Army man? A. Yes, we did.

(Testimony of Henry Lester Pineda.)

Q. Did some of those cases bear a wire strap?

A. Yes.

Q. Did some of those cases bear a wire strap and a duplicate strap mark? A. Yes.

Mr. Faulkner: I object to all this as improper and not proper redirect examination. This is the exact word for word testimony of his direct examination.

The Court: I am hopeful we will get through with this witness. The objection will be overruled.

Mr. Faulkner: I object——

The Court: Very well, you note an objection. The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Were the cases with the single wire on them placed in the same lot or stack as the cases with the duplicate wire mark?

Mr. Faulkner: Some objection, leading and suggestive.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

A. If the man, the soldier there noticed the two strappings, then we set it aside for those cases to be taken outside to be candled, but if he didn't notice them with the one wire—the [1107] stack we put the one wire cases.

Q. Did you see cases with duplicate wire marks separated from the main stack? A. Yes.

Q. What was done with those cases?

A. They were taken outside to be examined.

Q. Were you outside the cooler?

(Testimony of Henry Lester Pineda.)

A. Yes, I went out there.

Q. Did you observe those cases of eggs outside the cooler? A. Yes.

Q. Did you observe them being examined?

A. I saw them being given to the man——

Mr. Faulkner: Same objection, not proper redirect examination.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

A. I saw them being given to the man for him to examine. There was just a little place there and I didn't go in and watch him candle.

Mr. Hippeli: May I have the scale, please?

Mr. Faulkner: If you are going to demonstrate the scale, Mr. Hippeli, will you agree for purposes of the record the scale is now in perfect balance?

Mr. Hippeli: Yes.

Q. Do you recall an instance in the first part of 1941 in which you cut butter which had been previously scored by Colonel Hand? A. 1942?

Q. 1942? A. Yes.

Q. Do you recall that instance? A. Yes.

Q. Will you step down to the scale, please? At that time did you cut any of the butter under 16 ounces to a pound? A. Yes, 15 ounces.

Mr. Faulkner: If your Honor please, just a moment. That is not redirect examination, not proper redirect examination at all. He takes an incident by all four's, goes through every detail of it, and then he starts in from the beginning again.

Mr. Hippeli: I am not intending to do that.

(Testimony of Henry Lester Pineda.)

The point I wish to make here, your Honor, is during the cross examination Mr. Faulkner had the witness testify that he placed a one-ounce piece of butter on the back of the scale. He then placed two one-pound prints on the scale. The witness previously testified that he cut those two one-pound prints one ounce short each. I do no think it is clear to the Jury, if there is only a one-ounce increase in weight on one side of the scale when two pounds of butter are put on there, how those two pounds can be cut two ounces short. I desire to illustrate the manner in which two pounds were cut two ounces short rather than one ounce short.

The Court: For that limited purpose I will allow it.

Mr. Faulkner: Exception.

The Court: Proceed.

Mr. Hippeli: Q. Will you place the weights on the scale, [1109] please? Those are two one-pound weights, are they not, Henry?

A. Yes, two one-pound weights.

Q. Remove the butter from the box. Take one out. Will you weigh a one-ounce piece from those sample cubes, please?

The Court: Step aside so the jurors may be able to see.

The Witness: It is over.

Mr. Hippeli: Q. We will place the two blank labels on the side with the weights to equalize the weight of the butter. Now, if that butter weighs

(Testimony of Henry Lester Pineda.)

two pounds, how will the fact that it does weigh two pounds be indicated on the scale?

Mr. Faulkner: Just a moment. Why don't you state the record accurately, Mr. Hippeli? The butter weighs more than two pounds, doesn't it?

The Witness: Right now it does, yes.

Mr. Faulkner: Mr. Hippeli?

Mr. Hippeli: I have asked a question.

Mr. Faulkner: I object to the misstating of that scale by reading. We have a demonstration.

The Court: The jurors are here. They can see.

Mr. Faulkner: Your Honor, I want the court reporter to get it in the record. The record shows——

Mr. Hippeli: I will bring that out after my question is answered. I am cross examining the witness. I would like to ask that.

Mr. Faulkner: Your Honor, may I conclude? Mr. Hippeli stated that the butter weighed two pounds. The scale shows that [1110] the butter weighs two pounds plus, the first black mark to the right of the center line.

Mr. Hippeli: I would like to have the question read. I said, "If it weighs two pounds, how is the poundage indicated on the scale?"

The Court: Read the question, Mr. Reporter.

(The last question was read.)

The Court: You may tell the jury.

A. There is an arrow that points right to the center of the scale, and if this arrow here meets this red indicator here, it means it weighs exactly

(Testimony of Henry Lester Pineda.)

two pounds, because we have two one-pound weights here. If it was like this it would be exactly two pounds.

Mr. Hippeli: Q. For Mr. Faulkner's sake, how much does that weigh?

A. Oh, a pound and one-eighth of an ounce each.

Q. How do you know it is one pound and an eighth of an ounce?

A. There is two pounds and a quarter, and that is one pound and an eighth each.

Q. Will you illustrate to the Jury the manner in which you placed the one-ounce cube of butter which you have in your hand on the scale?

A. I placed it underneath (indicating).

Q. You put it under the tray on which the butter is placed? A. Yes.

Mr. Faulkner: May the record show the butter is placed in this instance in the fore part of the scale, in front of the [1111] scale?

Mr. Hippeli: Q. How did you place it?

A. It all depends now.

Q. How did you place the butter in the instance——

A. If a man stood all the time on that side, I would place it over here; if a man stood on that side I would place it over here (indicating). Right now I place it here so the jurors can see. It is placed underneath. Just so they see I place it here.

Mr. Faulkner: Your Honor, Mr. Pineda should sit at the counsel table. I address your Honor and

(Testimony of Henry Lester Pineda.)

ask to show something and then the witness makes a speech.

The Court: May I observe that I told the witness himself to step aside so the jurors could see. Now, let us proceed, gentlemen.

Mr. Hippeli: Q. The scale now contains two one-pound prints of butter and two one-pound weights on the other plate? A. Yes.

Q. And then a one-ounce piece of butter on the plate containing the two one-pound prints?

A. Yes.

Q. How many ounces short would butter be cut if it contained a one-ounce print piece of butter under the plate and if the arrow weighing the scale were on the middle of the scale?

A. The middle of the scale would be one ounce. That would be a half ounce each piece, if it was right in the middle of the scale, right where the arrow is.

Q. On the incident in question how did you weigh the two one-pound [1112] prints of butter so that each one-pound print weighed 15 ounces?

A. I would cut it short so the indicator was right even with this one underneath where it says "Under". That would make it one ounce up to the center—that is one ounce, and the other ounce is up to here where this is. That would be one ounce over and one ounce under.

Mr. Faulkner: He points here where the arrow is and then he pointed away over to the right of the scale.

(Testimony of Henry Lester Pineda.)

The Witness: The arrow right here would be——

Mr. Faulkner: Mr. Pineda, just a moment. I am asking the Court to get the record right. He answered the question by pointing to the arrow and then by pointing to the right of the arrow.

The Witness: No, I did not. I placed the indicator right where it is now. That is where I placed it. You can't see it.

Mr. Faulkner: Your Honor, I have to argue with Mr. Pratt, with Mr. Hippeli, sometimes with your Honor, and now with the witness. I do not think I should be put in that position. I am stating the witness pointed to the arrow and then pointed to the right of the arrow.

The Court: The jurors are there. It is for them to determine what he has done. Let us proceed, gentlemen.

The Witness: When I cut this butter I cut it so the indicator was right of that.

Mr. Faulkner: Nothing before the Court. The question is [1113] unanswered. The witness keeps talking.

The Witness: I have a wife and two kids. I want to go back to work.

The Court: Just a moment.

Mr. Hippeli: Q. When you cut the butter and the arrow on the scale indicated one ounce on the left-hand side of the scale, which is labelled "Under", at that time was the one-ounce piece of butter also under the plate containing the butter?

A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Is that the manner in which you cut the butter two ounces short? A. Yes.

Q. Will you tell the Jury, please, what is indicated on the top of the scale or what weights are indicated?

A. The top indicates a quarter of an ounce over, a half an ounce over, three-quarters of an ounce over, and one ounce over.

Q. How does it indicate that?

A. By the arrow going to the right. It is marked here, "Over" here in red, and then it is marked, "Under," in red, and if this indicator goes under, it could be a quarter of an ounce, a half an ounce, three-quarters of an ounce, and one ounce.

Q. And does the arrow go under as it goes to the left? A. Yes.

Q. Last Wednesday evening after court did you accompany me to the home of Colonel Foster?

A. Yes, I did.

Mr. Faulkner: I object to that as hearsay as to the defendants, incompetent, irrelevant, immaterial, and not binding on the defendants, and not redirect examination. [1114]

Mr. Hippeli: The purpose of this testimony is this: On direct examination and on cross examination Mr. Pineda has mentioned Colonel Foster. Mr. Faulkner asked him to describe Colonel Foster, to be sure that it was Colonel Foster about whom he was talking. I took him out to see Colonel Foster.

Mr. Faulkner: We object to all this as not proper redirect examination.

(Testimony of Henry Lester Pineda.)

The Court: What is the purpose of the testimony?

Mr. Hippeli: The purpose of the testimony is to show that when the witness referred to Colonel Foster it was in fact not Colonel Foster. The colonel to whom he was referring——

The Court: Is the colonel available?

Mr. Hippeli: Yes, sir.

The Court: You will have to bring him into court then. They are not bound by any examination that you and the witness on the stand made. Proceed, gentlemen.

Mr. Hippeli: We will call Colonel Kielsmeier, please.

Mr. Hippeli: Will you step forward, Colonel, please?

(A gentleman approached the witness.)

Mr. Hippeli: Q. Mr. Pineda, have you seen this gentleman before? A. Yes.

Mr. Foulkner: Just a moment. We object to that as not proper redirect examination. In other words, he testified for day after day to a particular man, and they can't make an [1115] identification in this fashion that is binding on the defendants.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

The Court: Proceed.

Mr. Hippeli: Q. Have you seen Colonel Kielsmeier before?

A. Yes, that is the man I was referring to as Colonel Foster.

(Testimony of Henry Lester Pineda.)

Q. Have you seen this gentleman down at the Townsend Street plant of Nye & Nissen?

A. Yes, many times.

Q. Is this the gentleman to whom you were referring when you mentioned Colonel Foster?

A. Yes, he is.

The Court: Is that all from this witness?

Mr. Hippeli: Yes, your Honor.

Recross Examination

Mr. Faulknr: Q. Mr. Pineda, you testified on three or four days and you testified time after time about Colonel Foster, didn't you?

A. Yes.

Q. And when I asked you to describe Colonel Foster, and as soon as you left the witness stand, someone told you that you had misnamed the man, isn't that right?

A. No, not as soon, but then later or I think I described Colonel Foster—I can't remember when—but later on they said, "Are you sure it was Colonel Foster"? Not that same day. It might have been two days later. I said, "Certainly, I saw him there all the time." [1116]

Q. Did——

Mr. Hippeli: Let him answer.

The Witness: So they had me describe him. They said, "That isn't Colonel Foster you are describing."

I said, "Oh, yes, it is."

(Testimony of Henry Lester Pineda.)

So they took me out to see him.

Mr. Faulkner: Q. Who took you out?

A. Mr. Hippeli.

Q. Over what period of time, from the time you were first interviewed, until quarter to eleven, how long had you in your various statements to the FBI and the attorneys referred to transactions in which Colonel Foster participated?

A. Well, ever since they first questioned me I said Colonel Fosted instead of this man, here.

Q. You have testified in detail of how you went there and you actually selected cases for Colonel Foster? A. Yes.

Q. But it was not Colonel Foster, at all?

A. No, it was not.

Q. You have testified how Colonel Foster in your presence would go into the candling room and you would peek in and you would see Colonel Foster? A. Yes.

Q. And it was not Colonel Foster, at all?

A. No.

Q. And you have testified, repeated over and over, occasion when Mr. Goddard would go and phone Colonel Foster, and it was not Colonel Foster, at all? A. No.

Q. Have you ever seen Colonel Foster?

A. Yes.

Q. What?

A. That is how I got mixed up, yes. [1117]

Q. You have seen him? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. You have seen him many times, have you not?

A. No, not many times.

Q. Then your testimony, Mr. Pineda, is that any time, on any occasion that you referred to Colonel Foster it was not Colonel Foster at all?

A. It was that man, here, that just come in.

Q. And then when you told about transactions in which there were conversations, in which you heard Mr. Goddard say, "Now, Colonel Foster wasn't coming in," he didn't say, "Colonel Foster" at all?

A. He would say, "Colonel." Do you want me to tell you how I got mixed up on it?

Q. I want you to answer my questions. In any instance in which you said there was a conversation in which Mr. Goddard said, "Colonel Foster is coming in," he did not say Colonel Foster, at all, did he?

A. The first time. Not every time, no. The first time, yes.

Mr. Faulkner: Your Honor, I ask that the witness be directed to answer the question.

The Court: Read the question and answer.

(The record was read).

The Court: Let the question and answer stand.

Mr. Faulkner: Q. When was the first time you referred to a conversation in which Mr. Goddard said, "Colonel Foster is coming in"?

A. That was about 1938." [1118]

Q. And were you there when he came in?

(Testimony of Henry Lester Pineda.)

A. Yes.

Q. Is there any transaction that you testified to on direct or cross-examination relating to the handling of eggs in the presence of Colonel Foster did any transaction ever occur in the presence of Colonel Foster that you have testified to, over the period of time that you have been on the witness stand?

A. Well, in 1938 he was there.

Q. I am not asking you that, Mr. Pineda. You testified to transactions, inspections, breaking down of cases, and substitutions, and everything, day after day, in which Colonel Foster was present. Is there a single transaction that you have testified to up to this time which you have described in detail, when Colonel Foster actually was present?

A. When you mean actually present, do you mean was he the man who was inspecting the eggs, or was he in the plant?

Q. I mean just what I say.

A. Well, I am trying to find out. A lot of times you ask me two or three questions and you want one answer. I don't want to say something that I have to stay here another day for.

Q. How long have you been in attendance on the FBI?

A. What do you mean, "attendance"?

Mr. Hippeli: I object to that as immaterial.

The Court: The objection is sustained.

Mr. Faulkner: Q. You are pressed for time, is that right, Mr. Pineda? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. When was the last time you worked?

A. I had to work over [1119] the weekend. Every weekend I can work.

Q. I mean before this case started when was the last time you worked?

A. I worked every day.

Q. You worked every day up to the 15th of January?

A. Yes, yes—well maybe I had a day off. I am a longshoreman. When the ship is through we wait for a new assignment. I never took any days off to see any FBI men.

Q. Mr. Pineda, you were asked some questions by Mr. Hippeli about this scale?

A. Yes.

Q. Do you mind stepping down here again. You showed how you removed butter before, but I will ask you to show me how you knocked the butter off.

Mr. Hippeli: I object to that as no proper foundation having been laid. Here we have a cold scale. If he can duplicate the circumstances under which the butter was laid on the scale at the plant, I will direct the witness to answer. In the absence of similar circumstances, I object to the question.

Mr. Faulkner: I think the court is the one to direct the witness to answer.

Mr. Hippeli: If I used the word "direct" I apologize, your Honor. I mean I object to the witness answering.

Mr. Faulkner: I asked him to show how he knocked the butter off.

(Testimony of Henry Lester Pineda.)

The Court: What do you mean? [1120]

Mr. Faulkner: In other words, he tstified that when he would see the inspector coming that he would knock it off, or he would take it off.

The Court: Show the jury.

The Witness: See, where I am working the steam, the hot water is coming down alongside of me, and this scale is placed so it is about here. When I knock it off the inspector would be over there, so it is just about like this. When I knock it off I hit it with a nick of butter. I have the steam alongside of me and it is easy to come off Here it is kind of cold.

Q. You can't do it? A. No.

Q. Do the best you can.

A. Hit it here and it comes off. I hit it there with the butter and it comes off. I regulate it, and by that time I throw it here or throw it to the girl right here to use for patch butter. The girl always had this patch butter.

Q. You use those for patch butter?

A. No, I give it to her, so the inspector wouldn't know if it was her pieces of patch. If she used it, I weighed up a couple of more. I always had six or seven pieces around there.

Q. Mr. Pineda, show me, after you knocked it off, or after you pulled it off, how you would put it back on?

A. Just get the butter on and put it over here. It all depends on where you stand. [1121]

Q. Show me how you do it.

(Testimony of Henry Lester Pineda.)

A. Put it under here (indicating).

Q. How many times did you do that on this particular day?

A. I can't tell you. Whenever the inspector came. Here is another one that you haven't asked me——

Mr. Faulkner: Your Honor——

The Court: You ought to furnish this witness with a towel or something when he gets through.

Mr. Faulkner: He isn't quite finished.

The Court: Well, whenever he gets finished. Let us get finished.

Mr. Hippeli: May the record indicate he placed the piece of butter in the approximate position in which he placed it when he was first cross-examined by Mr. Faulkner?

Mr. Faulkner: Q. Mr. Pineda, would you say six or eight times would be a minimum of the number of times that you put the butter on and off as the inspector came in and out of there on that day? Will you please answer that "Yes" or "No"?

A. Your Honor, that isn't the only way I used to weigh it. He is just asking me one question.

The Court: You answer the question the way you understand it, yourself. Read the question.

(Question read.)

A. If I was using the one-ounce system under the scale, yes. [1132]

Mr. Faulkner: Q. Then on that particular day you took that butter on and off six or eight times.

(Testimony of Henry Lester Pineda.)

or a piece of butter similar to it, is that right?

A. Yes. If the inspector was there we used that system, yes. If I used another one I didn't do it. I didn't have to.

Q. While you were doing that the butter was coming down this line and you were also regulating a nozzle, weren't you?

A. Regulating a nozzle?

Q. Yes, the nozzle out of which the butter came, is that correct?

A. Yes, when I had to weigh it.

Q. Now, I would ask you, during the period of time I walk from this chair, to show me how you knocked the butter off, kept the butter rolling on, and turned the nozzle; will you start doing that?

A. Wait a second. The inspector doesn't come straight here. We have a pre-cut machine all full of butter. The man has to come around to this side. He doesn't just cross over. We have that pre-cut machine there. I can't do it. The man has to come from all around the butter, and we have piles of butter in the front where the man is pre-cutting it.

Mr. Faulkner: I move that that all go out as not responsive to the question.

The Court: Let the question and answer stand. I am trying to get through with this witness.

Mr. Faulkner: I am, too. [1123]

The Court: You promised me you would get through with him.

Mr. Faulkner: I know, but I didn't start this again.

(Testimony of Henry Lester Pineda.)

Q. Will you take that butter off, Mr. Pineda? I would like the record to show, your Honor, the scale is now out of balance. Oh, no! Do you see what he did, your Honor?

The Court: Yes.

Mr. Faulkner: He wiped that butter off. He wiped that butter off.

The Court: Is that all from this witness?

Mr. Faulkner: Yes, your Honor.

The Court: The jurors may take a recess for a few minutes.

(Recess.) [1124]

The Court: Proceed.

Mr. Faulkner: Your Honor, I have finished with this witness, but in order that the shorthand reporter's record may be clear, may the record show, Mr. Hippeli, that in the course of these experiments or demonstrations with the scales that the weights have been uniformly placed on the left-hand side as you face the arrow showing the weights?

Mr. Hippeli: That's right.

Mr. Faulkner: And that the butter has been placed on the right-hand side?

Mr. Hippeli: That's right, and also the one-ounce cube of butter that be placed under the scale was placed under the plate on the right hand side.

Mr. Faulkner: And that after the butter was removed the last time, as it was indicated to the witness that the scale was out of balance that he

(Testimony of Henry Lester Pineda.)

reached for some tissue paper and wiped the bottom of the scale?

Mr. Hippeli: And after wiping the bottom of the scale some butter came off from the bottom of the scale?

Mr. Faulkner: That's right.

Mr. Hippeli: And when the butter was removed from the bottom of the scale the scale resumed its proper balance.

Mr. Faulkner: Well, I won't agree to that. Even after wiping it it is practically in balance.

The Court: Is that all from this witness? [1125]

Mr. Faulkner: That is all.

Mr. Hippeli: I have one question.

Further Redirect Examination

Mr. Hippeli: Q. How did you confuse Colonel Foster with Colonel Kielsmeier?

A. The first time I saw Colonel Kielsmeier was——

Mr. Faulkner: We object to that. This is not redirect examination.

The Court: He may answer.

The Witness: That was in 1938, when Colonel Kielsmeier came down in his uniform with Colonel Foster and Colonel Foster didn't have a uniform.

Mr. Faulkner: May I ask the question be read back?

The Court: Read it.

(Question read by the reporter.)

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness, and not binding upon the defendants.

The Court: He may answer.

Mr. Faulkner: Exception.

The Witness: So Colonel Kielsmeier went down to the candling room to examine the eggs and Colonel Foster stayed in front talking to, I forgot whom; Mr. Smith or so. So after it was over I asked Mr. Goddard who the big shot was. He said, "Oh, that was Colonel Foster." Right there I took [1126] the man in uniform as Colonel Foster.

Mr. Faulkner: We object to this as not binding on the defendants.

The Court: The question and the answer may stand.

The Witness: So I took the man in uniform as Colonel Foster, never thinking there were two colonels, and later on it was Colonel this or Colonel that. It was always Colonel Foster. He didn't say "Foster it doing it." He said, "The Colonel." That is the man I seen the first time. There were two colonels there the first time, one was in uniform and one was not.

Mr. Hippeli: That is all.

Further Cross-Examination

Mr. Faulkner: Q. Mr. Pineda, the explanation you just gave is based upon the fact that when you went to see Colonel Foster he explained to you he had never seen you before, isn't it?

A. No. He said——

(Testimony of Henry Lester Pineda.)

Q. "Yes" or "No."

A. I don't remember if he said he was the man, but he said he was down there at Nye & Nissen's. I said I remembered seeing him there, but that is not the man that I referred to.

Q. Didn't Colonel Foster say to you when he went to Nye & Nissen's that he was there with others, but that he was usually upstairs talking to Jack Smith?

A. No. He said he was down there, he said something about Nye & Nissen. [1127]

Mr. Faulkner: That is all.

The Court: Step down.

Mr. Faulkner: Q. Did he tell you when he was down there?

A. I don't recall if he did, or not.

Mr. Faulkner: That is all.

The Court: Step down. Call your next witness.

Mr. Pratt: If the Court please, at this time the Government offers in evidence the document that has been marked Exhibit No. 1 for Identification, which is a certified copy of a general agency contract between the United States War Shipping Administration and the American Export Lines.

Mr. Faulkner: We make no objection to the form of the document, your Honor, it is a photostat, but we object to it as incompetent, irrelevant, and immaterial, and renew the objection made at the time it was originally offered, and it is respectfully submitted to the court that neither the testimony

of Colonel Haud nor Mr. Pineda laid the foundation for the admission of this document. No additional foundation has been laid since the original was offffered for identification.

Mr. Pratt: If the Court please, this is a Government contract between the United States and one of these shipping companies. It appears from this document that the Government appointed as its agent to manage and conduct the business of certain [1128] ships this American Export Lines. It further appears from this document that the particular ship which is mentioned in one of the overt acts in the first count of the indictment, namely, the Cape Bretons indicated by these same documents, a certified copy of which is here, is being one of the boats allocated to the American Export Lines. I take it the objection of Mr. Faulkner relates to the fact that the defendants had no part in this contract, and had perhaps no information in regard to it. Nevertheless, this is one of the essential elements of proof on the part of the Government to show the interest of the United States in the several transactions and contracts which have appeared and which will appear in evidence in this case. Am I right in the character of your objection, Mr. Faulkner?

Mr. Faulkner: May I make the same objection I made at the time that this originally was offered, your Honor, and submit at the time the Court limited these documents for identification, and since that time there has not been offered any evidence to supplement the foundation laid since the hearing

day of the trial. The indictment does not lay a foundation for the admission of this document."

Mr. Pratt: "The indictment charges a conspiracy to defraud the United States in connection with the supplying of stores to various vessels of the United States. The evidence shows and will show that in furnishing supplies purchase orders [1129] were issued by certain steamship companies directed to Nye & Nissen, who in response to those purchase orders, Nye & Nissen supplied eggs, butter and cheese to these various ships on the San Francisco waterfront. It further will show that Nye & Nissen thereupon issued invoices directed, not to the shipping company, but to the United States of America, War Shipping Administration, by or to the particular steamship company. That is mentioned in the several general agency contracts. Those contracts, as I said before, refer to jurisdiction to show the interest of the Government in these several transactions.

Now, this very same question recently arose in the case of McGonigle against the United States, which was decided on September 17, 1945, by the Circuit Court of Appeals for the First Circuit. In that case—I want to read briefly from this statement of the court:

"The appellants complain of the admission in evidence of the contracts between shipyards and the United States, under which the hulls in question were built and also of the admission in evidence of certain of the shipyard's bookkeeping records and vouchers. Their objection is on the ground of lack of evidence that they had any knowledge of the

contents or even of the existence of those documents. The objection is not well taken. It was obviously an essential part of the Government's [1130] case to show that eventually it would pay the entire labor cost of the ships and that is what the document in question clearly shows. The appellants' rights were adequately protected."

Now, in this instant situation, the indictment, as far as the substantive counts are concerned, charges that the matter was within the jurisdiction of an agency of the United States, to wit, the War Shipping Administration, or language to that effect, and these documents, these general agency contracts show the relationship between the Government and the shipping companies, show the authority of the shipping companies to order the stores that were purchased from Nye & Nissen, and to my mind, and in accordance with the decision in this McGonigle case, there could be no quqestion of the admissibility of these documents. It is my understanding that counsel does not contest at all the character of the certification of the document.

Mr. Faulkner: That's right. The legal argument is very interesting, but he does not take our position. We say we want a foundation laid——

The Court: In what respect hasn't the foundation been laid?

Mr. Faulkner: Because he has just offered this transaction. There isn't a word of evidence that Nye & Nissen had any business with them. No conspiracy has been shown in respect [1131] to this. The foundation for conspiracy has not been shown.

He has a great many of them, they don't all relate to the particular count. There is no evidence of the conspiracy. There is no evidence of the commission of an overt act. There no evidence that Nye & Nissen dealt with these people, no evidence that any transaction in which they did deal with them was tied in with any transaction in their plant.

In the Shipyard case, your Honor will recall the cases we tried here involving the same situation, that came right within the McGonigle case. I made no point there in the last case we tried of a war fraud, your Honor will recall, where they had a contract relating to the building of any ship. That is all right. We cannot complain of that. But he just takes 20 or 30, I don't know, contracts, and wants to put them in evidence. They should tie them in to counts concerning Nye & Nissen and show exactly when there were any business transactions.

Mr. Pratt: You can't prove everything at once.

Mr. Faulkner: I agree with that, but these will remain in court, they are quite handy.

The Court: Well, his objection that the proper foundation is not laid has some merit in it. At this time I will sustain the objection. You can renew your offer.

Mr. Pratt: Very well.

WILLIAM T. KIRSCHBAUM,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. William T. Kirschbaum.

Direct Examination

Mr. Pratt: Q. Your name is William T. Kirschbaum?

A. That's right.

Q. Your residence is where?

A. 1450 Chestnut Street, San Francisco.

Q. What is your occupation?

A. I am a buyer for Matson Navigation Company.

Q. Buyer for Matson Navigation Company. How long have you occupied that position?

A. Since approximately 1939.

Q. In connection with your official duties for the Matson Navigation Company as purchasing agent, you say, or buyer——

A. Buyer.

Q. Have you had any occasion to have any business transactions with Nye & Nissen?

A. That is correct.

Q. In what respect have you had such business transactions?

A. In making purchases for supplies of vessels.

Q. During this period of from 1939 to the present time, while you have been in that position with Matson Navigation Company, are you able to state how frequently you have had occasion to purchase supplies from Nye & Nissen?

(Testimony of William T. Kirschbaum.)

Mr. Faulkner: Was that date 1929 or 1939?

Mr. Pratt: 1939. Isn't that what I said?

Mr. Faulkner: I was not sure.

The Witness: As the requirements came up from time to time, that is to say, we have requisitions come into the office requiring certain commodities, why, we could call up the various concerns that were licensed by the War Shipping Administration to sell to the War Shipping Administration.

Mr. Pratt: Q. In the purchase of supplies for vessels since early 1942, in whose behalf would you purchase these supplies?

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness.

The Court: If he knows he may answer.

A. The United States Government, the name is U. S. A. War Shipping Administration.

Mr. Pratt: Q. Your company, the Matson Navigation Company, has had supervision, has it, of the supplies, supplying of stores for vessels on the waterfront here?

A. As agents for the Government, yes.

Q. As agents for the Government. How many vessels, if you know, have been under the direction and management for the Government by Matson Navigation Company?

A. At one time I believe it was slightly over a hundred.

Q. During this period then, you have acted as

(Testimony of William T. Kirschbaum.)

buyer in purchasing supplies for a hundred or more boats?

A. That's right. [1134]

Q. In behalf of the War Shipping Administration? A. That's right.

Q. What piers are occupied or utilized by Matson Navigation Company here on the waterfront?

A. The regular piers would be 30 and 32.

Q. Are those piers adjacent?

A. They are joined by what they call a bulkhead.

Q. On this bulkhead does your company have a storage plant or a place for transfer of supplies that are being furnished to ships?

A. They have a receiving corral.

Q. They have a receiving corral?

A. At the head of Pier 30.

Q. When supplies are purchased from vendors here in San Francisco to what point are they delivered? A. Either to the receiving corral—

Mr. Faulkner: We object to all this as hearsay as to the defendants.

The Court: I will allow it as a preliminary question.

The Witness: Either to the receiving corral at the head of Pier 30 or to ship's side on pier 30 or 32.

Mr. Pratt: Q. I direct your attention to a paper—Will you mark this?

(The document was marked U. S. Exhibit 71 for Identification.)

(Testimony of William T. Kirschbaum.)

Mr. Pratt: Q. I direct your attention to a paper marked Government's Exhibit 71 for Identification. Will you identify [1135] that document, if you can?

A. That is a copy of the original purchase order issued by Matson.

Q. Does this paper come from the regular records of Matson Company?

A. That is correct.

Q. Is this part of the records kept in the usual course of business by your company?

A. That's right, that is our copy.

Q. This is an office copy? A. Yes.

Q. A duplicate original, is it?

A. Correct.

Q. I observe that it has the name "Kirschbaum" in type on the right-hand side toward the top. That is your name, isn't it? A. Correct.

Q. Mr. Kirschbaum, what, if anything, did you have to do with the issuing of this purchase order?

A. When the requisition came in, why, I cause a purchase order to be issued.

Q. Now, in connection with this matter, the matter of this particular purchase order, I will ask you if you had anything personally to do with it, or was it done by your subordinates?

A. No. I handled that, personally.

Q. Do you know whether in connection with this transaction you had any telephone calls to the office of Nye & Nissen?

A. I would say I did, because of the fact that

(Testimony of William T. Kirschbaum.)

the regular purchase of eggs was shown on that—the purchase orders in our printed forms call for large eggs, U. S. Grade A, and I had to alter the description as shown on the requisition in which it was billed as "Mediums," and also I had to get the [1136] price on it, because we don't know the prices from day to day, they were changing.

Q. I notice in pencil the initial "K" opposite one of the items on this purchase order. Is that "K" in your handwriting? A. Yes.

Q. It is. Do you recall what, if any, conversation you had with anybody at Nye & Nissen in relation to this particular purchase order?

A. You mean after it was issued? [1137]

Q. In connection with it, before or after it was issued?

A. In the normal course of business we have to call up for prices, and whether or not they have supplies because of the scarcity of the commodities. Most of this stuff was War Shipping merchandise, purchased by War Shipping or War Food Administration as supplies for vessels.

Q. Do you recall as to this particular purchase order any conversation with anybody at Nye & Nissen?

A. No, I do not off-hand. I mean I do not recollect the actual conversation. As I stated, I must have called him because of the fact that the description had been altered in two places here.

Q. In what respect was the description altered?

A. Well, on the eggs, for example, it says "Me-

(Testimony of William T. Kirschbaum.)

dium", instead of "Large," and it is U. S. AA instead of Procurement 1.

Q. What is the difference, if you know, between Procurement 1 and U.S. AA in eggs?

A. U.S. AA is a better grade egg than a Procurement 1. Procurement 1 is comparable to a Grade A.

Q. And I think you said a moment ago that your practice was to order Large eggs?

A. That is correct.

Q. And the fact that Medium eggs are on the purchase order indicates what to you?

A. That I must have called them to get that description and the Large eggs were not obtainable at that time.

Q. I now show you another paper, which is marked Government's Exhibit 72 for Identification, and will you state what use was made of that document in connection with the purchase order, Exhibit 71 for Identification?

Mr. Faulkner: May I see the document before the witness answers, Mr. Pratt? We would object to that, your Honor, as hearsay as to the defendants, what use was made of that document.

Mr. Pratt: That is a preliminary question, if the Court please.

Mr. Faulkner: Even so.

The Court: What is this document? Ask the witness.

Q. What is this document, do you know?

A. This document is attached to our purchase

(Testimony of William T. Kirschbaum.)

order and becomes part of our purchase order because from the regular—the way we handle the merchandise, in other words, the purchase order, the original that goes, is not signed, and we sign this as part of the contract. This is signed, attached to it, and becomes part of the purchase order.

The Court: Proceed.

Mr. Pratt: Q. Mr. Kirschbaum, when the original of this purchase order, Exhibit 71 for Identification, was issued what was done with it?

Mr. Faulkner: Will you read that question?

(Question read.)

Mr. Faulkner: No objection.

A. The Addenda C was attached to it.

Q. You refer to Exhibit 72 for Identification?

The Court: Raise your voice and talk up.

The Witness: The Addenda C was attached to the original purchase order because it was part of the contract and mailed to the vendor.

Mr. Pratt: Q. Mailed to Nye and Nissen?

A. At the end of the day's business.

Q. Is there anything on this purchase order, Exhibit 71 for Identification, to indicate that the Exhibit 72 was attached to it when it went to Nye and Nissen?

A. I would say yes, there is a small "x" in a box which reads "Order subject to terms and conditions of the reverse side hereof and attached Addenda C."

Mr. Pratt: The Government offers in evidence Exhibits 71 and 72.

(Testimony of William T. Kirschbaum.)

Mr. Faulkner: Before your Honor passes on the exhibits may I ask the witness a few questions?

The Court: You may.

Mr. Faulkner: Q. Mr. Kirschbaum, this first document, the purchase order, as I understand, that is the department of which you are the head, is that right?

A. No, I am just the buyer in that department.

Q. I mean you are familiar with the issuance of purchase orders of this type?

A. That is correct.

Q. Was this purchase order prepared under your direction?

A. I caused that purchase order to be issued.

Q. That is what I mean? A. Yes. [1140]

Q. Do you know, Mr. Kirschbaum, or, rather, you know from reading this that you must have had a conversation of some kind because the eggs described there are not the general type that the Matson Navigation Company buy, is that correct?

A. That is correct.

Q. Do you remember that, this transaction at all, other than that? A. No, I do not.

Q. Do you know, Mr. Kirschbaum, whether this purchase order was issued before the order was filled or after or at the time?

A. Would you repeat that question, please?

Q. In other words, do you know whether this particular purchase order was issued as the first step in some negotiation with Nye and Nissen in respect to buying eggs?

(Testimony of William T. Kirschbaum.)

A. No, the first step was calling up to find if they had the stocks and to get the price.

Q. Yes?

A. And then the requisition was marked up and subsequent to that the purchase order was typed.

Q. Then the first step in this proceeding, of which this purchase order is a part, is the phoning of Nye and Nissen to see if they have the merchandise? A. That is correct.

Q. And if they do have the merchandise you in reality place an oral order, do you not?

A. I give them a verbal order.

Q. You give them a verbal order?

A. And then it is confirmed at the end of the day.

Q. Then later it is confirmed?

A. That is right. [1141]

Q. And you do your best to confirm it as speedily as possible? A. That is right.

Q. In what way is it confirmed?

A. With a written typed purchase order.

Q. In respect to this order, there is some writing here, Mr. Kirschbaum. When you issued the order dated October 5, 1944, was that writing on it when you issued it to Nye and Nissen?

A. This ink here——

Q. Yes? A. No, it was not.

Mr. Faulkner: We object to that document going in evidence, your Honor, and ask the Court to look at the writing on it. It is no part of the purchase order. It is some private——

(Testimony of William T. Kirkpatrick.)

Mr. Pratt: We do not offer that writing there.

Mr. Faulkner: Then take it off.

Mr. Pratt: We will cover it up in some way if you like.

The Court: The document will go in evidence omitting this writing that is not part of the document itself, that someone wrote in afterwards.

Mr. Faulkner: We make just merely the general obection, your Honor. It is incompetent and irrelevant and hearsay, no foundation laid.

The Court: The objection will be overruled. Let it be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 71.) [1142]

Mr. Faulkner: Is it offered as to all counts?

Mr. Pratt: It is offered as to all counts in the indictment. It is offered in connection with the first count, the transactions being related to the conspiracy. It is specifically related to one of the overt acts in the indictment. It is further offered as to the substantive counts as being a transaction exactly similar to those that are specifically described in the substantive counts.

Mr. Faulkner: We submit it is incompetent, irrelevant and immaterial and hearsay as to the defendants, and it is inadmissible on any substantive count in this indictment for very, very many reasons, one of which is the matter of intent and procedure and all that is not involved in the specific charge here that requires a specific intent to

(Testimony of William T. Kirschbaum.)

commit an offense at the time and place alleged in the indictment.

Mr. Pratt: In addition to what has been said about this document, a subpoena duces tecum was issued for the corporation to produce the original of this document and it was stated in open court that the corporation could not respond to that subpoena because they did no longer have this document.

Mr. Faulkner: We do not object to the authenticity, your Honor. We do not make any objection to the authenticity.

The Court: In any event, do you submit the matter?

Mr. Faulkner: Yes, your Honor.

The Court: The objection will be overruled. Let it be [1143] admitted and marked.

Mr. Faulkner: Exception.

Q. Mr. Kirschbaum, in respect to Exhibit 72——

Mr. Pratt: That is in evidence.

Mr. Faulkner: I beg your pardon. The Court has not passed on this yet.

The Court: Did you offer both of them?

Mr. Pratt: Yes, I offered both of them and the Court admitted them.

Mr. Faulkner: I have not asked the question about this. I understood your Honor ruled on Exhibit 71.

The Court: He offered them both together.

Mr. Faulkner: May I ask your Honor to vacate

(Testimony of William T. Kirschbaum.)

the ruling on 72 until I ask the witness a question?

The Court: Very well.

Mr. Faulkner: Q. Do you recognize this as an exact counterpart of the paper that went out in the exact form as it appears other than the marking of the Clerk of this Court, to your knowledge, to the firm of Nye and Nissen? A. I do.

Q. I mean is it exactly in that form?

A. That is correct.

Q. Was there any writing on it?

A. Just this—I don't know who put this on. There is a number at the top.

Mr. Pratt: A little louder.

The Witness: I say there is a number on top in pencil. I don't know where that came from. It did not go out that way [1144] attached to the original purchase order.

Mr. Faulkner: Q. I mean you did not identify this particular paper as the one that went to Nye and Nissen? A. No, I did not.

Q. This is merely similar to it.

Mr. Pratt: No, a counterpart, he said.

The Witness: That was the exact copy to the one that went out to Nye and Nissen.

Mr. Faulkner: Q. In other words, Mr. Kirschbaum, to clear this up you have a number of printed papers of this type? A. That is right.

Q. And a paper printed in this form, a counterpart or a similar paper, went to Nye and Nissen?

A. Correct.

(Testimony of William T. Kirschbaum.)

Q. What I would like to know is whether when it went to Nye and Nissen any of the blanks were filled out that appeared on the paper?

A. No.

Q. In other words, it would go as it?

A. As is.

Mr. Faulkner: The same objection, your Honor, to that, that it is incompetent, irrelevant and immaterial, as to any substantive count.

The Court: The objection will be overruled. Let it be admitted and marked.

Mr. Faulkner: Exception.

(Exhibit 72 was thereupon received in evidence.)

Mr. Pratt: If the Court please, at this time I would like [1145] to read portions of these exhibits to the Jury.

Mr. Faulkner: The Clerk has not removed that part.

Mr. Pratt: I am not going to read that part.

Mr. Faulkner: I would like the Clerk to remove that from the exhibit because I am going to show these exhibits to the Jury later.

The Court: You may take the scissors and clip that off.

Mr. Hippeli: Just a minute, if your Honor please.

Mr. Pratt: Q. Do you know whose handwriting that is on this document in pen?

A. I do.

Q. Whose is it?

(Testimony of William F. Kieselbaum.)

A. A man by the name of Howard Smith.

Q. Is he still in your employ?

A. That is correct.

Mr. Pratt: Now, if the Court please, I want to read these documents ——

Mr. Faulkner: I would like the Court to have the Clerk get the exhibit in proper shape. I would like that part that has not been admitted in evidence removed or obscured.

Mr. Pratt: There is no occasion for its being done, if the Court please, until after I read certain matters from these papers to the Jury. I am not going to read that particular part, and as long as the defendant is protected by my statement, that I am not going to read it, I see no purpose in its being obscured at this particular moment.

Mr. Faulkner: Whether it is done before he reads or after, I think Mr. Pratt knows I am not concerned with that. May it [1146] then be placed in order after you have read it?

Mr. Pratt: After I have read it, it may be obscured by a piece of paper being fastened over it.

The Court: With that assurance he may read it.

Mr. Pratt: Exhibit 71 is entitled, "Purchase Order, Matson Navigation Company, 480 Main Street, San Francisco, California, dated May 10, 1944."

(Testimony of William T. Kirschbaum.)

The number is ME-5402.

"Nye and Nissen, Inc., 1301 17th Street, San Francisco 10, California.

"P.O. Number 70,414.

"S.S. and voyage, Cape Breton, Voyage No. 4.

"Department, Stewards.

"Delivery Date, 5/10, 1 p.m.; delivery point, Coral Pier 30."

And then in small type, "This order is subject to terms and conditions on reverse side thereof, except as otherwise indicated by reference 'X' in box below."

And Reference "X" in the box below is as follows:

"Order subject to terms and conditions on reverse side hereof and in attached Addenda C."

And then in the next box, "Debtor, U.S. Government. For further information telephone Douglas 5233, Kirschbaum."

And then it describes the products purchased as follows:

"420 pounds Butter, domestic, 92 score, 2-pound square, 60-pound box, .4625. [1147]

"80 pounds Cheese, California Loaf, 5 pounds, with the pencil mark, ".295," and changed from apparently .302 a pound, and the amount changed to 84 pounds.

"20 pounds Cheese, grated, one-pound package, .49.

(Testimony of William T. Kirschbaum.)

"63 pounds of Cheese, Romano Dolce, 5-pound loaf, .36.

"45 cases of Eggs, Fresh, Processed Medium, White, U.S. "AA," 30 dozen, .39.

"We required Government inspection at point of delivery. Confirming."

On the reverse side, "Definitions"—this is entitled at the top "Terms and Conditions"——

"1. Definitions. As used herein: the term 'Purchaser' means Matson Navigation Company unless this order is executed by Matson Navigation Company as agent for The United States of America or any agency thereof, in which event the term 'purchaser' shall mean The United States of America; the term 'vendor' means the person, firm or corporation from whom the merchandise described on this order has been ordered; the term 'merchandise' includes all necessary work performed by the vendor under the terms of this order both before and after delivery to purchaser."

There are numerous other provisions in fine print on the back of this purchase order. Among others this:

"3. Warranty. Vendor warrants that: (a) the merchandise shall correspond with the description of the same on this [1148] purchase order and shall be of good quality; (b) the merchandise is free and clear of all liens and incumbrances whatsoever and that vendor has a good and marketable title thereto."

(Testimony of William T. Kirschbaum.)

As I said, there are many other provisions in fine print.

Now, on Exhibit No. 72, which was attached to 71, there is the following:

"Purchase Order Addenda C.

"United States of America, War Shipping Administration.

"Important—Please read carefully and avoid unnecessary clerical expense.

"Order issued as agent: This purchase is issued by Matson Navigation Company as agent for United States of America, War Shipping Administration.

"Invoices and California sales or use taxes: 6 copies of invoices shall be forwarded to the address stated herein and the name of the vendee, etc., stated on such invoices, shall be as follows:

"United States of America, War Shipping Administration, c/o Matson Navigation Company, Agent, SS——"

And then a blank—"Voyage number" blank—"when purchase is applicable to specific vessel." Those are to be filled in, those blanks.

"Vendor shall certify each original invoice in the following manner: [1149]

"I hereby certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with; and that state or local sales taxes are not included in the amounts billed."

(Testimony of William T. Kirschbaum.)

And there is a place for the contractor to sign "California retail sales or use taxes shall not be assessed."

The Court: It is now time for adjournment. The jurors may be excused until two.

(The jurors retired from the courtroom.)

Mr. Faulkner: Before your Honor adjourns, may I file with your Honor a motion to strike the evidence of Mr. Pineda, and I will serve a counterpart on Counsel for the Government, and if your Honor would indicate a time to argue it——

The Court: Will you be prepared this afternoon after I excuse the Jury?

Mr. Pratt: We haven't seen it. We would like a little time to consider it.

The Court: Whatever time is agreeable to both sides. You can take it up with the other side.

Mr. Faulkner: If we do not agree we will submit it to your Honor to fix a time.

The Court: Very well.

(Thereupon a recess was taken until 2:00 o'clock p.m.) [1150]

Afternoon Session, February 5, 1946, 2:00 p.m.

WILLIAM T. KIRSCHBAUM,

recalled.

Direct Examination—(Resumed)

The Court: You may proceed.

Mr. Pratt: Mr. Faulkner.

(Testimony of William T. Kirschbaum.)

Mr. Faulkner: What are you going to do?

The Clerk: Fasten this with this.

Mr. Faulkner: All right. We might change it later, but that's all right for now.

Mr. Pratt: I think when court adjourned, your Honor, I was reading from this Exhibit 72 in evidence, the purchase order addenda.

"Preference ratings certification applicable only when signed manually:

The undersigned purchaser certifies, subject to the penalties of section 35(a) of the United States Criminal Code, to the seller and to the War Production Board, that, to the best of his knowledge and belief, the undersigned is authorized under applicable War Production Board regulations or orders to place this delivery order, to receive the item (11-) ordered for the purpose for which ordered, and to use any preference rating or allotment number or sample which the undersigned has placed on this order."

Then below: [1451]

"Short form clause:

The vendor agrees that this purchase order is subject to and includes all applicable clauses set out in section 306.112 of General Order 42, issued by the War Shipping Administration on April 17, 1944. All such clauses, to the extent that the same are applicable, are expressly incorporated by this reference, and shall have the same force and effect as if herein fully set forth. To the extent that any of the terms and conditions of this purchase

(Testimony of William T. Kirschbaum.)

order are inconsistent or in conflict with the applicable provisions of said general order 42, the provisions of said general order shall control.

UNITED STATES OF AMERICA,
WAR SHIPPING ADMINISTRATION
By MATSON NAVIGATION COMPANY,
Agents.

H. W. MEARS,
Authorized Signature."

Mr. Faulkner: Mr. Pratt, would you indicate the parts on the reverse side that you read, so if I read I won't duplicate them?

Mr. Pratt: The parts I read on the reverse of the purchase order were in paragraph 1, entitled "Definitions," and paragraph 3 entitled "Warranty." I don't recall that I read any other portion.

Mr. Faulkner: Those are the ones with the little marks?

Mr. Pratt: Yes.

Q. Now, Mr. Kirschbaum, in connection with issuing this purchase order, or other purchase orders, to Nye & Nissen for the delivery [1152] of food products to vessels at the waterfront, I will ask you whether or not you had any conversations over the telephone with any of the officers or employees of Nye & Nissen?

A. Generally speaking I would say yes.

Q. With whom did you have such conversations?

(Testimony of William T. Kirschbaum.)

Mr. Faulkner: In relation to all purchase orders? I object as incompetent, irrelevant, and immaterial in relation to all purchase orders other than the one in question.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

The Witness: Usually with Mr. Jack Smith, or, in his absence, Ruby Goddard.

Mr. Pratt: Q. Mr. Jack Smith. Do you know what his position is, or was with Nye & Nissen?

A. His exact position, no, his title I don't know.

Q. What conversations did you have with either of these men relating to the food products to be supplied to the waterfront by them?

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial, and hearsay as to the defendants, and not within the issues in this case; general conversations unrelated in time, unrelated to the subject matter of the indictment.

Mr. Pratt: If the Court please, they are all related to the subject matter of the indictment. As far as the persons with whom Mr. Kirschbaum spoke, he mentioned Mr. Jack [1153] Smith, who is an officer of Nye & Nissen, I think vice president, and as far as conversations with Goddard are concerned, he is one of the defendants. These conversations relate to supplying of food products to the waterfront on contract by the War Shipping Administration, with whom Matson Navigation Company acted as agent, or for whom they acted, rather. This whole lawsuit relates to the sale of

(Testimony of William T. Kirschbaum.)

food products to vessels at the waterfront by the War Shipping Administration. It is entirely relevant.

Mr. Faulkner: Here was a man who just left the witness stand who testified to four or five years of activity before a War Shipping Administration ever stepped into the waterfront. If it is claimed that ever conversation that any employee of Nye & Nissen engaged in for the last seven or eight years may be admissible on the theory it is a conversation pursuant to and in furtherance of a conspiracy, it would be a rule of law that I have never heard of. It must relate to the subject matter of the suit.

Mr. Pratt: I will be glad to restrict the question to such conversations that took place after the Matson Navigation Company acted for the War Shipping Administration in the purchase of food products for ships at the waterfront.

Mr. Faulkner: He has offered the evidence on all counts, your Honor. I submit the objection——

Mr. Pratt: I offer it on all counts.

Mr. Faulkner (Continuing): That it is incompetent, irrelevant, and immaterial, and hearsay as to the defendants, and no foundation has been laid for these conversations.

The Court: Is the time fixed?

Mr. Pratt: I am fixing the time as during the period when Matson Navigation Company, acting as the agent of the War Shipping Administration,

(Testimony of William T. Kirschbaum.)

which would be since 1942, limiting it to that period, from that time until the period covered by the indictment.

The Court: Very well. You will have to fix it as best you can, the time of the conversation during that period.

Mr. Pratt: Q. Well, Mr. Kirschbaum, do you recall any specific time when you had such conversations with either Mr. Smith, an officer of the corporation defendant, or with Ruby Goddard, one of the defendants?

A. Normally, I wouldn't issue a purchase order until I had spoken with someone there to find out if they had stocks available.

Q. Directing your attention to this particular purchase order which you have identified, and which is Exhibit No. 71, and which is dated May 10, 1944, are you able to state whether you had such conversations as you have indicated about the date of this purchase order?

A. I would say yes, I did have a conversation with them.

Q. What conversations did you have with either of these men about that time in connection with the supplying of food products to ships at the waterfront? [1155]

Mr. Faulkner: We object to that. If the conversation is with Jack Smith, under no rule of law that I know of would it be admissible in this trial. When he merely says it was with one or the other, he has

(Testimony of William T. Kirschbaum.)

not laid a foundation. It would have to be with Mr. Goddard.

Mr. Pratt: Jack Smith is an officer of the corporation defendant.

The Court: Objection overruled. I will allow him to answer.

Mr. Faulkner: Exception.

The Witness: Would you read that question again?

The Court: Read the question.

(Question read.)

Mr. Faulkner: We object to that as being too general.

The Court: The Court has ruled and allowed the conversation on or about that time.

Mr. Faulkner: But it is not in relation to the particular order?

The Court: I don't know if it is.

Mr. Faulkner: He asked a question that involved a general conversation about supplying food products.

The Court: Read the question, Mr. Reporter.

(Question read.)

The Court: Overruled.

Mr. Faulkner: Exception. [1156]

The Witness: A. I would say I asked him if he had stocks, the quality of the merchandise and the price.

Mr. Pratt: Q. Was there any conversation with either of these men whereby you indicated the char-